RECENT IMPORTANT DECISIONS.

BANKRUPTCY—PREFERENTIAL PAYMENT—RECOVERY BY TRUSTEE.—A trustee in bankruptcy brings an action under Bankr. Act, § 60 (Act. July 1, 1898. c. 541, 30 Stat. 562 [U. S. Comp. St., 1901, p. 3445].) to recover moneys paid by an insolvent debtor to a creditor in violation of the provision relating to preferences. The trial court charged the jury among other things that for the plaintiff's recovery the evidence must show an intent on the part of the insolvent to give a preference to the defendant. *Held*, such intent need not be shown, and it was error for the court to so charge. *Benedict* v. *Deshel et al.* (1903), — N. Y. —, 68 N. E. 999.

The section of the act referred to provides: (a) A person shall be deemed to have given a preference if, being insolvent, he has made a transfer of any of his property and the effect of the enforcement of such transfer will be to enable any one creditor to obtain a greater percentage of his debt than any other creditor of the same class; (b) If a bankrupt shall have given a preference within four months before filing a petition and the person receiving it shall have reasonable cause to believe it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person. The argument in support of the charge of the trial court, and which is favored by two dissenting judges, is that it would be paradoxical to hold that the creditor should have reasonable ground to believe in the debtor's intent to give a preference unless that intent in fact exists; that a creditor's reasonable cause to believe a preference was intended, can only be predicated upon the existence of such an intent in the mind of the debtor. The court says this argument rests upon mere judicial construction and ignores the explicit language of the statute. *Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438. Subdivisions (a) and (b) are to be construed together. The former deals primarily with the debtor and the latter with the trustee. The debtor is not to be heard on the question of his intent, as the effect of his act is fixed definitely by law. The trustee may consider the preferential payment void only on condition that he establish that the creditor had reasonable cause to believe the payment was intended as a preference. No mere omission justifies any judical addition to the language of the statute. *United States* v. *Goldenberg*, 168 U. S. 103; *Sturgis* v. *Crowninshield*, 4 Wheat. 202.

CARRIERS—PASSENGERS—DERAILING OF TRAIN.—The plaintiff was a telegraph lineman, engaged in "repairing, putting up, and fixing telegraph wires, and doing other such work for defendant company."

He was one of a gang of workmen, who were transported free of charge by the company, in freight box cars fitted up as "camp cars," between points where their work might be needed. Several cars in the train, including the "camp car" in which the plaintiff was at the time riding, were derailed and overturned and the plaintiff was injured. In an action for damages, *Held*, that one employed as a telegraph lineman and transported to and from his work free of charge by the railroad company, and who while so traveling has nothing to do with the control or operation of the train, is a passenger, and that the company is bound to exercise extraordinary diligence to keep from injuring him. *Carswell* v. *Macon, D. & S. R. Co.* (1903), — Ga. —, 45 S. E. Rep. 695.

The question whether an employee riding on free transportation over the road of his employer, is or is not a passenger, is said to depend upon the control which the employer may then exercise, or is then exercising over the

employee. "A person may at one time be an employee when passing over a railroad, and at another time, in passing over the same road, be a passenger, though continuing all the while in a popular sense to be in the employment of the railroad company. *Doyle* v. *Fitchburg R. Co*, 162 Mass. 66, 37 N. E. Rep. 770, 25 L. R. A. 157. Where the employee was not under the control of his employer and had no duty to perform nor control over the movement of the train, he was held a passenger. *Gillenwater* v. *R. R.*, 5 Ind. 339, 61 Am. Dec. 101; *State, use of Abell* v. *R. R.*, 63 Md., 435. See, also, as to gratuitous passengers, *Philadelphia & Reading R. R.* v. *Derby*, 14 Howard 468. The principle case is, however, opposed to the weight of authority since it is now well settled, that a servant, although not actually engaged in work at the time, continues a servant during his transportation, where the express purpose of that transportation is to bring him more quickly and conveniently to his place of work. See, *Vick* v. *R. R. Co.*, 95 N. Y. 267, 47 Am Rep. 36; *Manvill* v. *C. & T R. R.*, 11 Ohio St. 417; *O'Brien* v *B & A. R. R*, 138 Mass. 387, 52 Am. Rep. 279; and *Tunney* v. *Midland R. R.*, L. R. 1 C. P. 291, 12 Jur., N. S., 691.

CONSTITUTIONALITY OF STATUTE—GUARANTY OF FREEDOM OF SPEECH—IMMIGRATION—EXCLUSION OF ANARCHISTS.—The immigration act of March 3, 1903, increased the number of classes of aliens who were to be excluded from admission into the United States. Among the additional classes are Anarchists, or persons who advocate the overthrow by force of governments. The board of special inquiry examined into the facts and decided that Turner is an "anarchist" and therefore excluded. Turner contends that the exclusion act contravenes the first amendment to the constitution which says that, 'Congress shall make no law abridging the freedom of speech."—*Held*: that the clause in the constitution concerning the abridgment of "freedom of speech" refers to the speech of persons in the United States and has no bearing upon the question what person shall be allowed to enter therein. *United States ex rel Turner* v. *Williams, Immigration Com'r.* (1903), —C. C. S. D. N. Y —26 Fed. Rep. 253.

The contention of relator that the exclusion act is unconstitutional has been raised in very many cases and in all of them overruled. Relator concedes the power of Congress to exclude all the persons enumerated except anarchists, contending that in the other cases the differentiation is physical rather than mental. In this decision the court followed the principles laid down in *Epieu's Case*, 142 U. S. 657, 12 Sup. Ct. 336, 35 L. Ed. 1146, and a long line of similar decisions. It is an accepted maxim of international law, that every sovereign nation has the power as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them in such cases only and upon such conditions as it may see fit to prescribe. VATTEL, lib. 2 §§ 94, 100: 1 PHILLIMORE (3rd. Ed), c. 10, § 220, *Fong Yue Ting* v. *United States*, 149 U. S. 698.

CONSTITUTIONAL LAW—CIVIL RIGHTS—POWER OF CONGRESS—CONSPIRACY AGAINST NEGROES.—Defendants were indicted for conspiring to prevent negroes from the free exercise of leasing and cultivating lands, solely by reason of their race and color, under the Civil Rights Act, (§ 1978, 1866), which gives such rights to all citizens and provides a penalty for their infringement. *Held*, on demurrer to the indictment that the statute was constitutional and a proper exercise of the power by Congress. *United States* v. *Morris* (1903), 125 Fed. Rep. 322, — D. C. E. D Ark.

Under the decision in *Scott* v. *Sanford*, 19 How. 393, 405; a negro, until after the enactment of the 13th Amendment and the civil rights act of 1866,